

IN THE COURT OF APPEAL OF TANZANIA

AT TANGA

(CORAM: MJASIRI, J.A., KAIJAGE, J.A., And MMILLA, J.A.)

CIVIL APPEAL NO. 42 OF 2016

MIRAJI SHABANI APPELLANT

VERSUS

SAID ALLY RESPONDENT

**(Appeal from the decision of the High Court of
Tanzania at Tanga)**

(Teemba, J.)

Dated 29th day of November, 2011

In

Land Appeal No. 12 of 2011

JUDGMENT OF THE COURT

24th & 27th June, 2016

MJASIRI, J.A.

This appeal arises from the decision of the High Court Land Division, in Land Case Appeal No. 12 of 2011 (Teemba, J.). The appellant, Miraji Shabani being dissatisfied with the decision of the District Land and Housing Tribunal at Korogwe filed his appeal to the High Court where he was unsuccessful. Still aggrieved the appellant has filed his appeal to this

Court. The case originated from Mombo Ward Tribunal in Application No. 2 of 2010.

At the hearing of the appeal the appellant appeared in person and was unrepresented, the respondent also appeared in person and fended for himself.

When the appeal was called on for hearing the Court wanted to satisfy itself as to whether or not there was a competent appeal before the Court. Upon perusal of the record it has come to our attention that the decision against which the appeal was sought was pronounced by the High Court on November 29, 2011 but the extracted decree was signed by the judge who delivered the judgment on November 28, 2017. Evidently the date of the decree differs from the date the judgment of the High Court was delivered. Therefore the decree indicated an earlier date.

The appellant when addressing the Court lamented that he did everything right and that he has filed his appeal on time. The disparity of the dates was not his fault as the decree was prepared by the High Court. He was interested in pursuing justice.

The respondent on his part stated that since there is a problem with the decree, the appeal is incompetent and should be struck out.

We on our part are of the considered view that the decree is defective. This has the effect of rendering the appeal incompetent.

Order 20 Rule 7 of the Civil Procedure Act, Cap 33 R.E. 2002 provides that:-

"The decree shall bear the date on which the judgment was pronounced and when the judge or magistrate has satisfied himself that the decree has been drawn in accordance with the judgment he shall sign the decree."

In **Jovin Mtagwaba and 85 Others v. Geita Gold Mining**, Civil Appeal No. 109 of 2005 CAT (unreported) this Court held that an appeal which was accompanied by a decree which did not bear the date when the judgment was pronounced was incompetent and the appeal was struck out. The date of decree is very significant. Mulla on the Code of Civil Procedure, (Fifteenth Edition) underscored the importance of the date of decree. He stated that,

*"Under this rule, **the decree comes into existence on the date of the judgment, though it is signed later.** Decree comes into existence as soon as the judgment is pronounced and not the day it is signed and sealed. For the purpose of appeal, time runs from the date of pronouncement of judgment."*

[Emphasis provided].

We are of the considered view that this is the correct position of the law. The right to execute a decree accrues from the date it is pronounced. Therefore a decree which does not bear the date the judgment was pronounced is not valid.

We are of the settled mind that the appeal is not properly before us. For an appeal to be competent it has to be accompanied by a valid decree in terms of Rule 96(1) (h) of the Tanzania Court of Appeal Rules, 2009. This Court has stated on numerous occasions that a decree that bears a different date from the judgment date is a defective decree. See for instance **Victor Frank Ishebabi v. Leisure Tours and Holdings and**

Others, Civil Appeal No. 152 of 2004, **Dhow Mercantile (E.A.) Ltd v. Abdirizzak S. Tuke**, Civil Appeal No. 93 of 2004, CAT (both unreported).

In the circumstances, we have no other option but to find the appeal before us incompetent. Consequently we hereby strike out the appeal with costs.

Order accordingly.

DATED at **TANGA** this 25th day of June, 2016.


S. MJASIRI
JUSTICE OF APPEAL

S.S. KAIJAGE
JUSTICE OF APPEAL

B.M. MMILLA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.




P.W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL